

WISCONSIN SUPREME COURT

TABLE OF PENDING CASES

Clerk of Supreme Court
Telephone: (608) 266-1880
Facsimile: (608) 267-0640
Web Site: www.wicourts.gov
Wisconsin Supreme Court Case Access: <http://wscca.wicourts.gov>

The following table describes pending cases the Supreme Court has accepted on petition for review, bypass, certification and original jurisdiction.

The cases included for the first time (that is, the most recently accepted cases) are marked with an * next to the case number. After the Supreme Court decides a case, the date of oral argument or date of submission on briefs is replaced with the date of the Supreme Court decision and abbreviated mandate. That mandate will generally be listed in the table for two months and then the case will be removed from the table.

The information in the table, from left to right, is as follows:

- the case number;
- an abbreviated caption of the case (case name);
- a statement of the issue(s);
- the date the Supreme Court accepted the case;
- the method by which the case came to the Supreme Court: REVW = Petition for review, CERT = Certification, CERQ = Certified Question, BYPA = Petition to bypass, ORIG = Original Action, WRIT = Petition for supervisory writ, REMD = Remanded from the U.S. Supreme Court;
- the date of oral argument or submission on briefs; or the date of the Supreme Court decision and an abbreviated mandate;
- the Court of Appeals district from which the case came, if applicable; the county;
- the date of the Court of Appeals decision, if applicable;
- whether the Court of Appeals decision is published or unpublished, and, if it is published, the citations to the public domain citation and the official reports for the Court of Appeals decision.

The statement of the issue is cursory and does not purport to be an all-inclusive, precise statement of the issues in the case. Readers interested in a case should determine the precise nature of the issues from the record and briefs filed with the Supreme Court.

The following table covers cases accepted and decisions issued through **January 29, 2014**. Please direct any comments regarding this table to the Clerk of Supreme Court, P.O. Box 1688, Madison, WI 53701-1688, telephone (608)266-1880.

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Case No.	Caption/Issue(s)	SC Accepted	CA Dist/Cty	CA Decision
2010AP1639-CR	<u>State v. Erick O. Magett</u> Where a defendant has entered a plea of not guilty by reason of mental disease or defect, may a court summarily refuse to hold a jury trial on the defense if it determines that the defendant will not present sufficient evidence to create a jury question? Would such circumstances result in harmless error upon appellate review?	03/13/2013 REVW Oral Arg 09/11/2013	4 Grant	Unpub.
2010AP3015	<u>Frank J. Sausen v. Town of Black Creek Board of Review</u> Whether a board of review's assessment of the classification of property is entitled to a presumption of correctness. See <u>Peninsular Power Co. v. Wisconsin Tax Commission</u> , 195 Wis. 231, 218 N.W. 371 (1928).	04/18/2013 REVW Oral Arg 09/04/2013	3 Outagamie	Unpub.
2010AP3016-CR	<u>State v. Nicolas Subdiaz-Osorio</u> Whether police may track the real-time location of a cell phone user without a warrant. Whether a criminal suspect made an unequivocal and unambiguous request for counsel during interrogation. Whether evidence obtained from cell phone tracking and statements made during interrogation should be suppressed or whether the admission of such evidence and statements constitutes harmless error.	03/13/2013 REVW Oral Arg 10/03/2013 In Sheboygan, Justice On Wheels	2 Kenosha	Unpub.
*2011AP1467-CR	<u>State v. Donyil L. Anderson, Sr.</u> As a matter of law, can a new trial in the interest of justice be granted on the ground the real controversy was not fully tried based on a forfeited challenge to a jury instruction where the erroneous instruction was harmless error? Was it error to grant a new trial in the interest of justice without an analysis that this is an exceptional case warranting the extraordinary remedy of discretionary reversal?	01/13/2014 REVW Oral Arg 04/08/2014	4 Rock	Unpub.
2011AP1514	<u>Robert L. Kimble v. Land Concepts, Inc., et al.</u> Whether a \$1,000,000 punitive damages award against a title insurance company violates the Wisconsin Constitution or the common law of Wisconsin.	07/14/2013 REVW Oral Arg 12/19/2013	3 Door	Unpub.
2011AP1572	<u>Julaine K. Appling, et al. v. James E. Doyle, et al.</u> Whether Wis. Stat. ch. 770, the domestic partnership law, violates Art. XIII, § 13 of the Wisconsin Constitution.	06/12/2013 REVW Oral Arg 10/23/2013	4 Dane	01/30/2013 Pub. 2013 WI App 3 345 Wis. 2d 762 826 N.W.2d 666

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*2011AP1653	<u>State v. Carlos A. Cummings</u> Whether the sentence imposed was unduly harsh. Whether there was a valid waiver of a suspect's <u>Miranda v. Arizona</u> , 384 U.S. 436 (1966) rights when he asked to be taken to his cell during the interrogation?	12/17/2013 REVW Oral Arg 03/19/2014	4 Portage	Unpub.
2011AP1956	<u>James E. Kochanski v. Speedway Superamerica, LLC</u> Did the trial court err in giving Wis JI-Civil 410 (absent witness) instructions to a jury under the circumstances of the case?	02/12/2013 REVW Oral Arg 09/04/2013	1 Milwaukee	Unpub.
2011AP2188	<u>State ex rel. Ardonis Greer v. David H. Schwarz</u> Whether the Department of Corrections, after erroneously issuing a discharge certificate early, can pursue revocation proceedings against an individual for an action committed after he was advised he was discharged from supervision. Whether a circuit court, sitting in certiorari, has the authority to apply equitable estoppel to the question of whether the Department of Corrections and Division of Hearings and Appeals acted according to law in issuing a revocation order.	06/12/2013 REVW Oral Arg 10/22/2013	2 Racine	11/29/2012 Pub. 2012 WI App 122 344 Wis. 2d 639 825 N.W.2d 497
2011AP2424-CR (consolidated with 2012AP918, State v. Seaton)	<u>State v. Nancy J. Pinno</u> Whether the failure to object at trial to a Sixth Amendment public-trial violation should be analyzed on appeal as a "forfeiture" or a "waiver" of the issue.	02/25/2013 CERT Oral Arg 09/04/2013	2 Fond du Lac	--
2011AP2482	<u>Wisconsin Auto Title Loans Inc. v. Kenneth M. Jones</u> Is an order denying a motion to compel arbitration immediately appealable as a "final" order under Wis. Stat. § 808.03 or the Federal Arbitration Act? If an order denying a motion to compel arbitration is immediately appealable, is the trial court's order which determined that the arbitration clause at issue is unconscionable, contrary to <u>AT&T Mobility LLC v. Concepcion</u> , ___ U.S. ___, 131 S. Ct. 1740 (2011), and <u>Cottonwood Financial, Ltd. V. Estes</u> , 2012 WI App 12, 339 Wis. 2d 472, 810 N.W.2d 852 (<u>Cottonwood II</u>) cases?	06/12/2013 CERT	1 Milwaukee	--

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*2011AP2548-CR	<u>State v. Luis M. Rocha-Mayo</u> Whether the state should be allowed to introduce into evidence, during an OWI prosecution, the results of a qualitative breath test (PBT), not approved for evidential use in Wisconsin, because it was administered by an individual who was not in law enforcement. Whether such a PBT result should be accorded a <u>prima facie</u> effect of intoxication. Whether an emergency room doctor should be permitted to give testimony as to an ultimate fact (intoxication) which embraces a legal concept for which a definitional instruction is required.	11/21/2013 REVW Oral Arg 02/04/2014	2 Kenosha	Unpub.
2011AP2597	<u>Associated Bank N.A. v. Jack W. Collier, et al.</u> Is a creditor's right to obtain a common law creditor's/receiver's lien against a judgment debtor's personal property conditioned upon docketing the judgment in the Judgment and Lien Docket under Wis. Stat. § 806.10 (1)? Is a judgment creditor entitled to relief, in the form of a declaration, that its judgment is effectively docketed in the Judgment and Lien Docket when a clerk accepts the docketing fee but fails to record the judgment in the Judgment and Lien Docket?	04/18/2013 REVW Oral Arg 09/11/2013	2 Waukesha	Unpub.
2011AP2608	<u>Michael D. Phillips, et al. v. Daniel G. Parmelee, et al.</u> Does the asbestos exclusion in a "Businessowners" commercial general liability (CGL) insurance policy bar coverage for claims made against the insured? Does an alleged misrepresentation regarding the presence of asbestos in a building constitute an "occurrence" under a standard CGL policy? Does the total pollution exclusion in a CGL policy preclude coverage for the asbestos-related damages claimed against the insured? Does a standard CGL policy provide coverage for the claimed violation by the insured of Wis. Stat. §§ 895.446 and 943.20? Is the coverage for the damage claim against the insured limited by the punitive damage exclusion in the CGL policy?	05/24/2013 REVW Affirmed 12/27/2013 2013 WI 105	1 Milwaukee	01/30/2013 Pub. 2013 WI App 5 345 Wis. 2d 714 826 N.W.2d 686
2011AP2698-CR	<u>State v. Curtis L. Jackson</u> Whether the trial court improperly denied a defendant's motion to admit evidence of the victim's reputation for violence where the victim's reputation was unknown to the defendant. (See <u>McMorris v. State</u> , 58 Wis. 2d 144, 152, 205 N.W.2d 559 (1973) and Wis. Stats. §§ 904.04 (2) (b) and 904.05 (1) and (2)).	02/12/2013 REVW Affirmed 01/22/2014 2014 WI 4	1 Milwaukee	Unpub.

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2011AP2733-CR	<u>State v. Minerva Lopez</u> Whether the trial court properly exercised its discretion in determining that the prosecution's case would be prejudiced if recorded statements of a 14-year-old victim are ruled inadmissible at trial when the victim had turned 16 and is no longer under the testimonial protection of Wis. Stat. § 908.08.	02/11/2013 REVW Oral Arg 09/03/2013	4 Dane	Unpub.
2011AP2774	<u>Attorney's Title Guaranty Fund, Inc. v. Town Bank</u> Whether an enforceable creditors lien attaches to personal property acquired after a Wis. Stats. ch. 816 supplementary proceeding has been held. Whether the fact that the supplemental commissioner's order and proof of service were not filed with the clerk of court rendered the creditor's lien unenforceable.	05/13/2013 REVW Oral Arg 09/11/2013 Additional Oral Arg 02/25/2014	2 Waukesha	01/30/2013 Pub. 2013 WI App 6 345 Wis. 2d 705 827 N.W.2d 116
2011AP2833-CR	<u>State v. Jacqueline R. Robinson</u> Did a trial court's amended sentence for criminal convictions violate the double jeopardy clause of the state and federal constitutions? (See <u>State v. Burt</u> , 2000 WI App 126, 237 Wis. 2d 610, 614 N.W.2d 42).	02/12/2013 REVW Oral Arg 09/03/2013	1 Milwaukee	Unpub.
*2011AP2868-CR	<u>State v. Clayton W. Williams</u> Whether Wis. Stat. § 346.65(2)(am)6 imposes a mandatory minimum period of confinement for OWI seventh offense and greater. Does the statute prohibit the imposition of probation in such cases?	11/21/2013 REVW Oral Arg 02/05/2014	4 Monroe	06/26/2013 Pub. 2013 WI App 74 350 Wis. 2d 311 833 N.W.2d 846
2011AP2902	<u>Board of Regents – UW System v. Jeffrey S. Decker</u> Whether there is evidence in the record to show that a person engaged in "acts which harass or intimidate another person and which serve no legitimate purpose" to support a petition for injunctive relief under Wis. Stat. § 813.125(4)(a). See <u>Bachowski v. Salamone</u> , 139 Wis. 2d 397, 408, 407, N.W.2d533 (1987).	06/14/2013 REVW Oral Arg 10/15/2013	4 Dane	Unpub.
2011AP2905-CR	<u>State v. Darryl J. Badzinski</u> Did the trial court's answer of "no" to a deliberating jury's question whether the jurors had to agree on the room in which an assault occurred deprive a defendant of his right to a unanimous verdict of guilt beyond a reasonable doubt?	04/18/2013 REVW Reversed 01/29/2014 2014 WI 6	1 Milwaukee	Unpub.

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2011AP2907-CR	<u>State v. Antonio D. Brown</u> Whether an officer had probable cause under the Fourth Amendment to stop a vehicle where the vehicle's tail lamp was sixty-six percent functional and in "good working order" as required under Wis. Stat. § 347.13(1). Whether <u>Arizona v. Gant</u> , 556 U.S. 332 (2009) applies to the fact situation presented in this case and, if so, how?	10/15/2013 REVW Oral Arg 01/15/2014	1 Milwaukee	02/26/2013 Pub. 2013 WI App 17 346 Wis. 2d 98 827 N.W.2d 903
*2011AP3007-CR	<u>State v. Derik J. Wantland</u> When a passenger asks "got a warrant for that?" before an officer opens a briefcase found in the hatchback of a car, has the driver's general consent to search the car been limited?	11/21/2013 REVW Oral Arg 02/20/2014	2 Sheboygan	03/27/2013 Pub. 2013 WI App 36 346 Wis. 2d 680 828 N.W. 2d 885
2012AP5	<u>CED Properties LLC v. City of Oshkosh</u> Does notice pleading allow a plaintiff to challenge the entire amount of a special assessment when the plaintiff's complaint understated the amount of the special assessment? Does Wis. Stat. § 802.09(3) – the statute governing relation back – allow a plaintiff to amend its complaint to challenge the entire amount of a special assessment when the original complaint mistakenly understated the amount of the special assessment?	09/18/2013 REVW Oral Arg 12/18/2013	2 Winnebago	06/26/2013 Pub. 2013 WI App 75 348 Wis.2d 305 836 N.W.2d 654
*2012AP46-CR	<u>State v. Jimothy A. Jenkins</u> Was a defendant denied his constitutional rights to counsel when his attorney failed to investigate, subpoena, and call to testify a neutral eyewitness who may have provided exculpatory evidence? May a postconviction court rely on a finding of a lack of credibility to conclude that trial counsel's failure to call a witness to testify at trial did not constitute ineffective assistance of counsel?	12/16/2013 REVW Oral Arg 04/03/2014	1 Milwaukee	Unpub.
*2012AP55	<u>State v. Andres Romero-Georgana</u> Whether postconviction counsel provided ineffective assistance by challenging the circuit court's sentencing decision rather than raising a plea withdrawal claim based on the circuit court's failure to orally advise the defendant of the deportation consequences of his no-contest plea, as required by Wis. Stat. § 974.08(1)(c).	12/19/2013 REVW Oral Arg 04/08/2014	3 Brown	Unpub.

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2012AP122	<u>Anthony Gagliano & Co., Inc. v. Openfirst, LLC, et al.</u> May a landlord recover from its tenant's subtenant (or more remote subtenants) all future rent that the immediate tenant promised to pay, regardless of the terms of the transfer from tenant to subtenant or the amount of time that the subtenant occupied the premises? Whether a tenant assigned the lease to subsequent occupiers of the premises, enabling the landlord to recover future rent from the tenant's assignees, or whether subsequent occupiers of the premises were subtenants of the first tenant and the landlord cannot recover future rent from the subtenants. Whether the appellate court should have reversed a directed verdict ruling and remanded the action so that a lease extension issue could be determined as a matter of fact by a jury?	09/18/2013 REVW Oral Arg 12/18/2013	1 Milwaukee	02/26/2013 Pub. 2013 WI App 19 346 Wis. 2d 47 828 N.W.2d 268
2012AP150-CR	<u>State v. Jessica A. Nellesen</u> Must a criminal defendant who wants to compel the state to disclose the identity of an informer make a preliminary showing that the informer could give specifically delineated testimony that might create a reasonable doubt about the defendant's guilt by supporting the asserted theory of defense?	10/15/2013 REVW Oral Arg 01/09/2014	4 Wood	04/24/2013 Pub. 2013 WI App 46 347 Wis. 2d 537 830 N.W.2d 266
2012AP183	<u>Randy L. Betz v. Diamond Jim's Auto Sales</u> Is attorney consent required for settlement of fee-shifting claims? Whether the language of the settlement agreement in this case, which was entered into by the parties without participation of either party's counsel, was a valid, unambiguous, binding contract that released the auto seller of any further obligation in connection with the auto buyer's claims, including responsibility for the auto buyer's attorney's fees. Whether the settlement agreement in this case violates public policy and is therefore unenforceable.	05/10/2013 REVW Oral Arg 01/09/2014	1 Milwaukee	11/29/2012 Pub. 2012 WI App 131 344 Wis. 2d 681 825 N.W.2d 508

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*2012AP320	<u>Sharon R. Waranka v. Wadena Insurance Company, et al.</u> May the court apply Wis. Stat. § 895.04 to the plaintiff's wrongful death action to define the class of beneficiaries, the limitation on non-economic damages, and to determine who can bring an action for wrongful death, where the accident causing death occurred in another state, which precludes application of Wis. Stat. § 895.03? May Wis. Stat. § 895.04 be applied to a case without also applying Wis. Stat. § 895.03, which creates a cause of action for wrongful death where the death occurred in Wisconsin? Is conflict of law analysis required in a wrongful death action, where a death occurred in another state but where most of the relevant parties and the relatives of the decedent are domiciled in Wisconsin or brought into the lawsuit under Wisconsin's direct action statute?	11/20/2013 REVW Oral Arg 02/20/2014	2 Ozaukee	05/29/2013 Pub. 2013 WI App 56 348 Wis. 2d 111 832 N.W.2d 133
2012AP336-CR	<u>State v. Bobby L. Tate</u> Whether obtaining a cell phone's location constitutes a "search" within the meaning of the Fourth Amendment. If so, what probable cause standard applies before police can obtain location information? Whether statutory authorization is necessary before a court can permit a cell phone location search, and whether such statutory authorization exists.	06/12/2013 REVW Oral Arg 10/03/2013 (in Sheboygan, Justice On Wheels)	1 Milwaukee	Unpub.
2012AP337-CR	<u>State v. Muhammad Sarfraz</u> Whether the explicit details of alleged prior consensual sexual contact between the alleged victim and the defendant were admissible under Wis. Stat. § 972.11(2)(b), an exception to Wisconsin's Rape Shield Law. If the trial court erroneously exercised its discretion when it excluded the prior sex acts evidence, was the error harmless?	09/17/2013 REVW Oral Arg 12/18/2013	1 Milwaukee	05/29/2013 Pub. 2013 WI App 57 348 Wis. 2d 57 832 N.W. 2d 346
*2012AP378-W	<u>Lorenzo D. Kyles v. William Pollard</u> What is the appropriate procedure to follow when challenging trial counsel's alleged failure to file a notice of intent to pursue postconviction relief?	12/17/2013 REVW Oral Arg 04/03/2014	1 Milwaukee	--

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2012AP392	<u>State Farm Fire and Casualty Company v. Hague Quality Water, International</u> May a subrogated insurer that pays for damage to a rental property caused by a water softener circumvent the manufacturer's warranty by pursuing tort claims or does the economic loss doctrine bar such tort claims where the homeowner purchased the water softener that included a warranty limiting the water softener manufacturer's liability for defects to the cost of repair or replacement of the water softener and disclaimed responsibility for incidental, consequential, or secondary damages and the purchaser/homeowner installed the water softener into a rental property; and the purchaser/homeowner procured the insurance to cover the risk that the water softener may leak and cause damage to the rental property?	10/15/2013 REVW Affirmed 01/28/2014 2014 WI 5	2 Sheboygan	01/30/2013 Pub. 2013 WI App 10 345 Wis. 2d 741 826 N.W.2d 412
*2012AP393-CR	<u>State v. Cortez Lorenzo Toliver</u> Does the general rule that a defect of subject matter jurisdiction may be raised at any time conflict with the appellate rule that a party is not permitted to raise an argument for the first time on appeal? Where a court does not make a specific probable cause finding required by Wis. Stat. § 970.032, does the court lose subject matter jurisdiction over the criminal proceeding?	12/17/2013 REVW Oral Arg 04/03/2014	2 Racine	Unpub.
*2012AP520-CR	<u>State v. Adrean L. Smith</u> Whether, during custodial interrogation, police violated a suspect's right to remain silent by continuing to question him after he stated, "I don't know nothing about this stuff, so I don't want to talk about this."	12/17/2013 REVW Oral Arg 03/19/2014	1 Milwaukee	Unpub.

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*2012AP580	<p><u>Russell Adams v. Northland Equipment Company, Inc.</u></p> <p>May the trial court compel the plaintiff in an action for the recovery of personal injuries brought against the tortfeasor and its insurance company, to accept the settlement to which the plaintiff objects upon the motion of a worker's compensation insurance carrier that has paid worker's compensation benefits to the plaintiff arising out of the same occurrence for which the plaintiff has brought the common law action?</p> <p>Is it a violation of the Wisconsin Constitution, Article I, Section 5, Right to Trial by Jury, or Article I, Section 9, Right to Remedy, to compel a plaintiff in an action for the recovery of personal injuries brought against the tortfeasor and its insurance company, to accept the settlement to which the plaintiff objects upon the motion of a worker's compensation carrier that has paid worker's compensation benefits to the plaintiff arising out of the same occurrence for which the plaintiff has brought the common law action?</p> <p>If a court may compel a plaintiff to accept a settlement offer pursuant to the authority to resolve disputes under Wisconsin Statutes § 102.29, must the court require a hearing compliant with due process, including an opportunity to present witnesses, to cross-examine witnesses and the other elements of a hearing to guarantee due process?</p> <p>Where a worker's compensation carrier is seeking to compel a plaintiff to accept a proposed settlement pursuant to Wisconsin Statutes § 102.29, what is the standard of the burden of proof required: by the clear and convincing evidence, by the preponderance of the evidence and/or by another standard?</p> <p>In resolving a dispute between a plaintiff/injured employee and the worker's compensation carrier where the worker's compensation carrier has brought a motion to compel the plaintiff to accept a settlement under the authority of Wisconsin Statutes § 102.29, such settlement being offered by the tortfeasor and/or its liability insurance carrier, is it error to allow a tortfeasor and/or its liability insurance carrier to participate in the presentation of evidence or argument in support of such motion?</p>	<p>11/20/2013 REVW Oral Arg 02/04/2014</p>	<p>4 Rock</p>	<p>Unpub.</p>

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*2012AP584-AC	<u>League of Women Voters of Wisconsin Education Network, Inc. v. Scott Walker, et al.</u> Do the portions of 2011 Wisconsin Act 23 require constitutionally qualified and registered voters to display a specified form of government-issued photo identification at the polling place as a prerequisite to voting constitute an impermissible additional qualification to vote in violation of Wis. Const. Art. III, § 1? Do the portions of 2011 Wisconsin Act 23 require constitutionally qualified and registered voters to display a specified form of government-issued photo identification at the polling place as a prerequisite to voting exceed legislative authority under Wis. Const. Art. III, § 2? Did the petitioners have standing to bring this action challenging the facial constitutionality of the Voter ID provisions?	11/20/2013 REVW Oral Arg 02/25/2014	4 Dane	06/26/2013 Pub. 2013 WI App 77 348 Wis. 2d 714 834 N.W.2d 393
2012AP597	<u>Scott Partenfelder, et al. v. Steve Rohde, et al.</u> Whether the Federal Railroad Safety Act ("FRSA") preempts plaintiffs' state law negligence and safe-place claims, or whether these claims fall within the "specific, individual hazard" exception to FRSA preemption.	09/17/2013 REVW Oral Arg 01/14/2014	1 Milwaukee	04/24/2013 Pub. 2013 WI App 48 347 Wis. 2d 385 830 N.W.2d115
2012AP667	<u>Brian Casey v. Ronald Smith, et al.</u> Whether a non-trucking-use insurance policy provided coverage for an accident that occurred when a semi-truck was driven to a repair shop for alleged nonessential maintenance.	10/15/2013 REVW Oral Arg 01/14/2014	3 Dunn	02/26/2013 Pub. 2013 WI App 24 346 Wis. 2d 111 827 N.W.2d 917
2012AP829	<u>Ronald E. Belding, Jr. v. Deeanna L. Demoulin</u> May Wis. Stat. § 632.32 (5) € be used to prohibit an insurance provision expressly authorized by another subsection of Wis. Stat. § 632.32 (5)? May a statute, unambiguous on its face, be rewritten by the court based upon a perceived conflict with another statute? Should Wis. Stat. § 632.32 (6) (d) be construed to prohibit the "drive other car" exclusion expressly authorized by Wis. Stat. § 632.32 (5) (j)?	05/13/2013 REVW Oral Arg 10/23/2013	2 Kenosha	02/26/2013 Pub. 2013 WI App 26 346 Wis. 2d 160 828 N.W.2d 890
2012AP858	<u>Vicki L. Blasing v. Zurich American Ins. Co., et al.</u> Does the omnibus statute, Wis. Stat. § 632.32(3)(a), require that a liability insurer defend and indemnify a tortfeasor where the alleged negligence caused injury to the named insured person?	06/13/2013 REVW Oral Arg 10/15/2013	4 Jefferson	02/26/2013 Pub. 2013 WI App 27 346 Wis. 2d 30 827 N.W.2d 909

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2012AP918 (consolidated with 2011AP2424-CR, State v. Pinno)	<u>State v. Travis J. Seaton</u> Whether the failure to object at trial to a Sixth Amendment public-trial violation should be analyzed on appeal as a "forfeiture" or a "waiver" of the issue.	02/25/2013 CERT Oral Arg 09/04/2013	2 Fond du Lac	--
*2012AP1047	<u>Asma Masri v. State of Wisconsin Labor and Industry Review</u> Whether <i>de novo</i> review of a statute's underlying purpose is a necessary judicial function, regardless of the level of deference granted to an administrative agency's interpretation of a statute. Whether a full-time health care intern with full access to HIPAA (Health Insurance Portability and Accountability Act)-protected patient medical records and an "all-access" badge to medical facilities is protected under the HCWPA (Health Care Worker Protection Act).	11/13/2013 REVV Oral Arg 03/13/2014	1 Milwaukee	05/29/2013 Pub. 2013 WI App 62 348 Wis. 2d 1 832 N.W.2d 139
*2012AP1307-CR	<u>State v. Jeremiah J. Purtell</u> Whether it was appellate error in reversing a trial court's decision based on a sua sponte argument and factual determinations that were not presented to the trial court.	11/20/2013 REVV Oral Arg 02/05/2014	2 Washington	Unpub.
2012AP1426	<u>State v. Brandon H. Bentsdahl</u> Does <u>State v. Brooks</u> , 113 Wis. 2d 347, 335 N.W.2d 354 (1983) (a trial court has discretion to dismiss a refusal charge after a defendant pleads guilty to a charge of operating a motor vehicle while under the influence of an intoxicant (OWI)) apply when a defendant goes to trial on an OWI charge? Does <u>Brooks</u> apply under current law to allow trial courts to dismiss refusal charges under their discretionary authority?	06/13/2013 REVV Modified, affirmed, remanded 12/27/2013 2013 WI 106	4 Columbia	Unpub.
*2012AP1582-CR	<u>State v. Andrew J. Matasek</u> Whether the circuit court has the discretion under Wis. Stat. § 973.0315 to withhold its judgment on expungement until after a defendant successfully completes probation.	11/20/2013 REVV Oral Arg 02/20/2014		05/29/2013 Pub. 2013 WI App 63 348 Wis. 2d 243 831 N.W.2d 450

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Case No.	Caption/Issue(s)	SC Accepted	CA Dist/ Cty	CA Decision
*2012AP1644	<u>Rachelle R. Jackson v. Wisconsin County Mut. Insurance Corp.</u> Did a deputy sheriff qualify as an underinsured motorist (UIM) under an insurer's policy, based on her "use" of a vehicle, when she was hit by the insured's vehicle while walking in front of it in a pedestrian crosswalk, and when she was not at the time manipulating, controlling, or in any other way connected to the vehicle at the time she was hit, because she intended to direct other vehicles to allow the insured's vehicle to merge into traffic? If a deputy sheriff was "using" the insured's vehicle, is she entitled to UIM benefits under the insurer's policy based on her use of the UIM vehicle that injured her?	11/26/2013 REVW Oral Arg 03/13/2014	1 Milwaukee	05/29/2013 Pub. 2013 WI App 65 348 Wis. 2d 203 832 N.W.2d 163
*2012AP1652	<u>Milwaukee Branch of the NAACP, et al. v. Scott Walker, et al.</u> What is the constitutional validity of Act 23's photo identification requirements under the suffrage provisions in Wis. Const. art. III?	Oral Arg 02/25/2014 BYPA Oral Arg 02/25/2014	4 Dane	--

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Case No.	Caption/Issue(s)	SC Accepted	CA Dist/ Cty	CA Decision
*2012AP1769-CR (Consolidated with 2012AP1770-CR and 2012AP1863-CR)	<u>State v. Martin P. O'Brien</u> Must hearsay admitted at a preliminary hearing under newly enacted Wis. Stats. § 970.038 meet a threshold level of reliability before a court can use it to find probable cause? At a preliminary hearing, can the State satisfy its burden of showing the higher degree of probable cause needed to bind over a felony for trial by relying solely on a hearsay witness who offers the criminal complaint, for which a lesser degree of probable cause is required? Can a court use the recently enacted Wis. Stats § 970.038 to limit defense cross-examination of a hearsay witness to the question of whether that witness heard the hearsay, rather than the plausibility of the out-of-court declarant's account of the underlying offense? Following the recent enactment of Wis. Stats § 970.038, before the defendant can call his own witness at a preliminary hearing, must the defense make an offer of proof that the testimony will be dispositive to defeat probable cause, rather than simply relevant to the plausibility of the charged offense? Did the preliminary hearing court's application of Wis. Stats § 970.038, which admitted hearsay and precluded the defendant from calling the out-of-court declarant to test his ability to see, hear and remember the relevant facts pertaining to his story, violate the defendant's right to due process? Does a defendant's constitutional right to confront his accusers apply at an adversary-type preliminary hearing such as that granted by Wisconsin statutes? Is a defendant's right to the effective assistance of counsel at a preliminary hearing denied when the state's only evidence offered is the criminal complaint and the defendant is not permitted to cross-examine witnesses with personal knowledge? Whether § 970.038 of the Wisconsin Statutes unconstitutionally deprives a defendant of due process of law.	12/05/2013 REVW Oral Arg 03/14/2014	2 Walworth	08/30/2013 Pub. 2013 WI App 97 349 Wis. 2d 667 836 N.W.2d 840

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Case No.	Caption/Issue(s)	SC Accepted	CA Dist/ Cty	CA Decision
*2012AP1770-CR (Consolidated with 2012AP1769-CR And 2012AP1863-CR)	<p><u>State v. Kathleen M. O'Brien</u></p> <p>Must hearsay admitted at a preliminary hearing under newly enacted Wis. Stats. § 970.038 meet a threshold level of reliability before a court can use it to find probable cause?</p> <p>At a preliminary hearing, can the State satisfy its burden of showing the higher degree of probable cause needed to bind over a felony for trial by relying solely on a hearsay witness who offers the criminal complaint, for which a lesser degree of probable cause is required?</p> <p>Can a court use the recently enacted Wis. Stats § 970.038 to limit defense cross-examination of a hearsay witness to the question of whether that witness heard the hearsay, rather than the plausibility of the out-of-court declarant's account of the underlying offense?</p> <p>Following the recent enactment of Wis. Stats § 970.038, before the defendant can call his own witness at a preliminary hearing, must the defense make an offer of proof that the testimony will be dispositive to defeat probable cause, rather than simply relevant to the plausibility of the charged offense?</p> <p>Did the preliminary hearing court's application of Wis. Stats § 970.038, which admitted hearsay and precluded the defendant from calling the out-of-court declarant to test his ability to see, hear and remember the relevant facts pertaining to his story, violate the defendant's right to due process?</p> <p>Does a defendant's constitutional right to confront his accusers apply at an adversary-type preliminary hearing such as that granted by Wisconsin statutes?</p> <p>Is a defendant's right to the effective assistance of counsel at a preliminary hearing denied when the state's only evidence offered is the criminal complaint and the defendant is not permitted to cross-examine witnesses with personal knowledge?</p> <p>Whether § 970.038 of the Wisconsin Statutes unconstitutionally deprives a defendant of due process of law.</p>	<p>12/05/2013 REVW Oral Arg 03/14/2014</p>	<p>2 Walworth</p>	<p>08/30/2013 Pub. 2013 WI App 97 349 Wis. 2d 667 836 N.W.2d 840</p>
2012AP1812	<p><u>County of Grant v. Daniel A. Vogt</u></p> <p>Does an officer who approaches a vehicle without probable cause or reasonable suspicion that a violation of the law has been committed, and then knocks on the window and motions for the driver to roll down his window, unreasonably seize the driver?</p>	<p>10/15/2013 REVW Oral Arg 01/09/2014</p>	<p>4 Grant</p>	<p>Unpub.</p>

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*2012AP1863-CR (Consolidated with 2012AP1769-CR and 2012AP1770-CR)	<u>State v. Charles E. Butts</u> Must hearsay admitted at a preliminary hearing under newly enacted Wis. Stats. § 970.038 meet a threshold level of reliability before a court can use it to find probable cause? At a preliminary hearing, can the State satisfy its burden of showing the higher degree of probable cause needed to bind over a felony for trial by relying solely on a hearsay witness who offers the criminal complaint, for which a lesser degree of probable cause is required? Can a court use the recently enacted Wis. Stats § 970.038 to limit defense cross-examination of a hearsay witness to the question of whether that witness heard the hearsay, rather than the plausibility of the out-of-court declarant's account of the underlying offense? Following the recent enactment of Wis. Stats § 970.038, before the defendant can call his own witness at a preliminary hearing, must the defense make an offer of proof that the testimony will be dispositive to defeat probable cause, rather than simply relevant to the plausibility of the charged offense? Did the preliminary hearing court's application of Wis. Stats § 970.038, which admitted hearsay and precluded the defendant from calling the out-of-court declarant to test his ability to see, hear and remember the relevant facts pertaining to his story, violate the defendant's right to due process? Does a defendant's constitutional right to confront his accusers apply at an adversary-type preliminary hearing such as that granted by Wisconsin statutes? Is a defendant's right to the effective assistance of counsel at a preliminary hearing denied when the state's only evidence offered is the criminal complaint and the defendant is not permitted to cross-examine witnesses with personal knowledge? Whether § 970.038 of the Wisconsin Statutes unconstitutionally deprives a defendant of due process of law.	12/05/2013 REVW Oral Arg 03/14/2014	2 Walworth	08/30/2013 Pub. 2013 WI App 97 349 Wis. 2d 667 836 N.W.2d 840

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Case No.	Caption/Issue(s)	SC Accepted	CA Dist/Cty	CA Decision
2012AP1869	<u>Richard S. Wilcox v. Estate of Ralph Hines</u> May a person establish possession of property "under claim of title", as required under Wisconsin's 20-year adverse possession statute, Wis. Stat. §893.25, by use alone where the possessor expressly disclaims ownership of the property? Is the fact that permission to occupy the property was sought and granted by a person erroneously thought to be the true owner irrelevant to the question of whether the possessor occupies the property under claim of title?	09/17/2013 REVW Oral Arg 12/19/2013	4 Sauk	05/29/2013 Pub. 2013 WI App 68 348 Wis. 2d 124 831 N.W.2d 791
*2012AP1967	<u>Data Key Partners v. Permira Advisors LLC, et al.</u> Must a shareholder alleging breach of fiduciary duty against a corporation's directors plead facts that, if true, would satisfy the conditions for director liability required by the Business Judgment Rule and the Director Immunity Statute, Wis. Stat. § 180.0828, in order to state a claim upon which relief can be granted? May being compelled to sell one's shares in a publicly traded corporation as a result of a duly authorized merger constitute legal harm? Can minority shareholders in a corporation state a claim against the majority for breach of fiduciary duty where the majority allegedly facilitated, and thereafter voted its shares in favor of a merger that paid the minority more per share than the majority received?	12/16/2013 REVW Oral Arg 03/18/2014	4 Wood	09/25/2013 Pub. 2013 WI App 107 350 Wis. 2d 347 837 N.W.2d 624

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Case No.	Caption/Issue(s)	SC Accepted	CA Dist/Cty	CA Decision
2012AP2067	<u>Madison Teachers, Inc. v. Scott Walker</u> Whether the following provisions of 2011 Wis. Act 10 are unconstitutional: The provision prohibiting collective bargaining between municipal employers and the certified representatives for municipal general employee bargaining units on all subjects except base wages. Wis. Stat. § 111.70(4)(mb)1. The provisions limiting negotiated base wage increases to the increase in the Consumer Price Index, unless a higher increase is approved by voter referendum. Wis. Stat. §§ 111.70(4)(mb)2., 66.0506, and 118.245. The provisions prohibiting "fair share" agreements that previously required all represented employees to pay a proportionate share of the costs of collective bargaining and contract administration. Wis. Stat. § 111.70(1)(f) and the third sentence of Wis. Stat. § 111.70(2). The provision prohibiting municipal employers from deducting union dues from the wages of municipal employees. Wis. Stat. § 111.70(3g). The provision requiring annual recertification elections of the representatives of all bargaining units, requiring 51% of the votes of the bargaining unit members (regardless of the number of members who vote), and requiring the commission to assess costs of such elections. Wis. Stat. § 111.70(4)(d)3.	06/14/2013 CERT Contempt order of Circuit Court vacated 11/21/2013 2013 WI 91	4 Dane	--
2012AP2085	<u>Kelli Brandenburg v. Robert Luethi</u> Does <u>Desaire v. Solomon Valley Co-Op</u> , 1995 U.S. Dist. LEXIS 14523 (D. Kan. Sept. 14, 1995) set forth an appropriate standard for evaluating whether a defendant can be liable for his/her independent contractor's alleged negligence? Should the "inherently dangerous" standard for triggering a principal's vicarious liability for an independent contractor's negligence apply to individuals who do not regularly have employees or hire independent contractors?	10/21/2013 REVW Oral Arg 01/15/2014	3 Trempealeau	Unpub.
*2012AP2115	<u>Timothy Williams v. Valued Services of Wisconsin LLC</u> Whether the Wisconsin Consumer Act (WCA) precludes a court from determining that a very high interest rate is, by itself, unconscionable. What role should a high interest rate play in a court's determination of unconscionability under the WCA?	11/20/2013 CERT Voluntary dismissal 01/16/2014	4 Sauk	--

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*2012AP2140-CR	<u>State v. Angelica C. Nelson</u> If a circuit court prohibits a defendant in a criminal case from testifying in her own defense, does Wisconsin case law provide that the defendant is automatically entitled to a new trial?	12/16/2013 REVW Oral Arg 03/18/2014	3 Eau Claire	Unpub.
*2012AP2170	<u>State v. Joseph J. Spaeth</u> Wisconsin Stat. § 980.02(1m) and (2) requires that a commitment petition be filed "before the person is released or discharged" and alleges that a person has been convicted of a sexually violent offense. Does § 980.02 also require that the commitment petition be filed before the person is released or discharged from a sentence that was imposed for the same sexually violent offense that is alleged in the petition as the predicate offense (See <u>State v. Gilbert</u> , 2012 WI 72, ¶51, 342 Wis. 2d 82, 816 N.W.2d 215)?	11/26/2013 CERT Oral Arg 03/13/2014	2 Winnebago	--
*2012AP2185-CR	<u>State v. James R. Hunt</u> Whether it was error for the trial court to prevent a witness from testifying that he did not send the defendant illegal materials.	12/17/2013 REVW Oral Arg 03/19/2014	4 Jefferson	Unpub.
*2012AP2196	<u>Jim Weissman, et al. v. Tyson Prepared Foods, Inc.</u> Whether pre- and post-shift donning and doffing of generic work clothing is non-compensable time under Wis. Stat. § 103.02 and the Wisconsin Admin. Code § DWD 272.12, because such work clothing is not "integral" and "indispensable" to employees' principal work activities.	12/16/2013 REVW Oral Arg 04/08/2014	4 Jefferson	09/25/2013 Pub. 2013 WI App 109 350 Wis. 2d 380 838 N.W.2d 502
2012AP2402	<u>Hailey Marie-Joe Force, et al. v. American Family Mutual Insurance Company, et al.</u> Can the minor children of a man killed in a car accident recover for wrongful death under Wis. Stat. § 895.04 when there is a surviving spouse, but that surviving spouse has been estranged from the decedent for over ten years, thus precluding any recovery by the spouse from which to set aside the children's share? If the statute does not allow the children to recover absent a recovery by the surviving spouse, does the statute violate the Equal Protection Clause of the United States Constitution by impermissibly differentiating between minor dependent children by conditioning their recovery on the viability of the surviving spouse's claim? Is there a rational basis for providing recovery to minor children whose deceased parent's surviving spouse has a viable claim and denying recovery to those whose deceased parent's surviving spouse does not?	10/21/2013 CERT Oral Arg 01/15/2014	2 Waukesha	--

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Case No.	Caption/Issue(s)	SC Accepted	CA Dist/Cty	CA Decision
*2012AP2499	<u>Eileen W. Legue v. City of Racine</u> Does governmental immunity apply when someone is injured because an officer proceeds against a traffic signal as authorized by Wis. Stat. § 346.03(2)(b), if the officer slowed the vehicle and activated lights and sirens as required by § 346.03(3) but nonetheless arguably violated the duty to operate the vehicle "with due regard under the circumstances" as required by § 346.03(5)?	11/26/2013 CERT Oral Arg 03/14/2014	2 Racine	--
*2012AP2513-CR	<u>State v. Raphfeal Lyfold Myrick</u> Did the court of appeals amend a statutory rule of evidence (Wis. Stat. § 904.10) making it applicable in a situation that was excluded by the supreme court when the supreme court promulgated the rule?	01/13/2014 REVW Oral Arg 04/09/2014	1 Milwaukee	10/30/2013 Pub. 2013 WI App 123 351 Wis. 2d 32 839 N.W.2d 129
*2012AP2557-CR	<u>State v. William F. Bokenyi</u> Did a prosecutor's sentencing argument breach a plea agreement by undermining the agreed-upon sentencing recommendation? Was defense counsel ineffective for failing to object to the alleged breach of the plea agreement? Should the court overrule the court of appeals' decision in <u>State v. Sprang</u> , 2004 WI App 121, 274 Wis. 2d 784, 683 N.W.2d 522?	12/06/2013 REVW Oral Arg 03/18/2014	3 Polk	Unpub.
*2013AP221	<u>Dow Family, LLC v. PHH Mortgage Corporation</u> Whether the common law doctrine of equitable assignment, the Uniform Commercial Code or both exempt assignments of real estate mortgages from the Statute of Frauds, with the result that a mortgage automatically accompanies a mortgage note upon negotiation or transfer of the latter without any written assignment of mortgage or recording of any document being necessary. Whether the purchaser's good faith in purchasing the property is relevant to the right to foreclose.	12/16/2013 REVW Oral Arg 03/18/2014	3 Barron	09/25/2013 Pub. 2013 WI App 114 350 Wis. 2d 411 838 N.W.2d 119

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